



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CTS/169225

PRELIMINARY RECITALS

Pursuant to a petition filed October 7, 2015, under Wis. Admin Code, §HA 3.03, to review a decision by Milwaukee Enrollment Services in regard to Caretaker Supplement (CTS) benefits, a hearing was held on November 10, 2015, by telephone. A hearing set for October 28, 2015 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner's CTS application can be backdated and if so, to which date.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Atty. [REDACTED]
Disability Rights Wisconsin

[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was found to be eligible for Supplemental Security Income (SSI) in September, 2009. At the time she was receiving BadgerCare Plus Medical Assistance (MA) and FoodShare for a household that included her son, who was born in 2008. Her son does not receive SSI. Petitioner

has remained eligible for those benefits on an ongoing basis with no lapse. A county worker noted the SSI in October, 2009.

3. Petitioner applied for CTS in early April, 2010. On April 6, 2010, she informed her county worker that she had spoken with “SSI people” and decided to withdraw the CTS application because it would cause problems with SSI and MA. The worker changed the CTS request to be no request.
4. Petitioner applied for CTS in May, 2015 and requested backdating to the start of her SSI eligibility. Milwaukee Enrollment Services granted CTS and issued it retroactive to January 1, 2015. The Milwaukee agency granted backdated CTS to February, 2010; however, the state agency overturned the backdating. Petitioner then filed this appeal.

DISCUSSION

Beginning January 1, 1998, with the advent of the Wisconsin Works (W-2) program, Aid to Families with Dependent Children (AFDC) ceased to exist in this state. Since W-2 is a work program, and SSI recipients by definition are unable to work, SSI recipients cannot qualify for W-2. The state thus implemented the Caretaker Supplement Program, which currently pays Supplemental Security Income (SSI) recipient parents \$250 per month for one child, and \$150 per month for additional children. The program is mandated by Wis. Stat., §49.775.

To be eligible for the CTS payments the following criteria must be met: **(1)** the caretaker must be an SSI recipient, or if both parents are in the home, both parents must receive SSI; **(2)** the child or children must meet the financial and non-financial criteria for AFDC as it existed on July 16, 1996; and **(3)** the child or children must not receive SSI payments themselves. Wis. Stat., §49.775(2). Other requirements in subsection (2) are that the caretaker cannot be eligible for Wisconsin Works due to her receiving SSI, the child cannot receive SSI, and the household would have been eligible for the old AFDC program. The statute does not include a requirement that the person apply for the benefit to become eligible.

The Department issued the CTS Handbook to detail the operation of the program. The Handbook, §3.1.1, provides that a CTS application can be made to the local agency, and that such application usually will be made concurrently with other benefit programs. That section also provides that workers can use the state CARES computer system to determine CTS eligibility back to January, 1998. Notably, the Handbook does not say that CTS is limited to the month of application forward or to a specific backdate month.

§4.2 of the Handbook provides that in limited circumstances the worker may interface with CARES to determine CTS for previous time periods. It provides two examples but does not limit backdating to those examples. The only limitation is that CTS cannot be paid for a month in which the group was not open for assistance on CARES.

In this case petitioner became eligible for SSI in September, 2009, and in January, 2010 made inquiries about other possible assistance programs (in January, 2010 there was a notation that petitioner’s SSI was ending, but on February 5, 2010 it was noted that she was receiving federal SSI). She applied for the program in April but quickly withdrew the application when she received incorrect information about the effect of CTS on her benefit programs. While it is true that the bad information came from “SSI people,” it also is true that the county worker should have had at least a basic understanding of how CTS would affect MA, and the worker at very least should have inquired about the effect on petitioner’s programs. Certainly one would wonder why Wisconsin started a program for SSI recipients that could have a negative effect on SSI eligibility.

The agency's state office denied the backdating because of the provision that the household had to be eligible for the old AFDC program under Wis. Stat., §49.19. §49.19(4) provides that a person would be eligible for AFDC as of the date of application or when all eligibility criteria were met, whichever was later. Thus CTS cannot be backdated to prior to the date of application. Of course, the agency's position belies the fact that petitioner's CTS benefits were backdated to January 1, 2015 without hesitation when she applied in May, 2015; based upon the agency's interpretation the CTS paid to petitioner for the months prior to May, 2015 would be an agency-error overpayment. Furthermore, petitioner did apply for CTS at the earlier date in April, 2010. I agree with petitioner's position that although petitioner withdrew the application, it was worker error to fail to correct the misinformation upon which petitioner made the withdrawal.

I conclude that petitioner's CTS application should be backdated to April, 2010 (I note that the agency's attempt to backdate did not include April and May, 2010; perhaps petitioner did not receive SSI those months). That is the month she applied for CTS, and the month in which it should have been opened if not for the worker error of accepting a withdrawal based upon clearly incorrect information about CTS's effect on benefits. The county worker was an agent of the state agency; she had a duty to know the program's rules.

I accept the Department's position that the person must apply. I can find no evidence that petitioner had an eligibility review between September, 2009 and April, 2010, at which time a request for CTS would have been part of the process. Clearly there was knowledge of petitioner's SSI at the county level, but I cannot make the jump to say that the worker's should have automatically processed CTS without a request. When petitioner inquired about other programs in January the word was that SSI was ending, so I cannot find that the worker should have suggested CTS.

Furthermore, while the law does not require an application, and while the Handbook talks about backdating, the examples encompass a situation where the person already applied, and a second situation in which SSI was awarded retroactively (in other words, unforeseen circumstances). It would behoove the Department to specify in the Handbook the necessity of an application to commence CTS eligibility.

CONCLUSIONS OF LAW

1. Petitioner's request for backdated CTS must be approved for eligible benefits retroactive to April, 2010 when she applied for the program, because the application was withdrawn due to worker error when petitioner noted that she was withdrawing due to incorrect eligibility information that the worker should have known was incorrect.
2. Petitioner request for backdated CTS cannot go back beyond April, 2010 because she did not apply for the benefit before then.

THEREFORE, it is

ORDERED

That the matter be remanded to Milwaukee Enrollment Services with instructions to process CTS benefits to petitioner that she would have been eligible to receive for the period April, 2010 through December, 2014. The agency shall take the action within 10 days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 23rd day of November, 2015

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 23, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability
Attorney [REDACTED]